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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS-FV-11-0060; FV11-927-2 FIR]

Pears Grown in Oregon and Washington; Assessment Rate

Decrease for Fresh Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as a final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Fresh Pear Committee (Committee) for the 2011-2012 and subsequent fiscal periods from \$0.501 to \$0.471 per standard box or equivalent of fresh winter pears handled. The Committee locally administers the marketing order which regulates the handling of fresh pears grown in Oregon and Washington. The Committee recommended the assessment rate decrease because the fresh winter pear promotion budget for the 2011-2012 fiscal period was reduced.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>;
or by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Under the order, Oregon-Washington fresh pear handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable fresh pears for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on July 1, and ends on June 30.

In an interim rule published in the **Federal Register** on August 31, 2011, and effective on September 1, 2011, (76 FR 54075, Doc. No. AMS-FV-2011-0060, FV11-927-2 IR), § 927.236 was amended by decreasing the assessment rate established for the Committee for the 2011-2012 and subsequent fiscal periods from \$0.501 to \$0.471 per standard box or equivalent of fresh winter pears handled. The Committee recommended the assessment rate decrease because the fresh winter pear promotion budget for the 2011-2012 fiscal period was reduced. The assessment rates for summer/fall and "other" fresh pears remain unchanged at \$0.366 and \$0.00, respectively.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,581 producers of fresh pears in the regulated production area and approximately 38 handlers of fresh pears subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

According to the Noncitrus Fruits and Nuts 2010 Summary issued in July 2011 by the National Agricultural Statistics Service, the average price for fresh pears in

2010 was \$591 per ton. The 2010 farm-gate value of fresh pears grown in Oregon and Washington is estimated at approximately \$249,500,579, based on shipments of 19,189,400 44-pound standard boxes. Based on the number of fresh pear producers in the Oregon and Washington, the average gross revenue for each producer can be estimated at approximately \$157,812. Furthermore, based on Committee records, the Committee has estimated that 56 percent of Northwest pear handlers currently ship less than \$7,000,000 worth of fresh pears on an annual basis. From this information, it is concluded that the majority of producers and handlers of Oregon and Washington fresh pears may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2011-2012 and subsequent fiscal periods from \$0.501 to \$0.471 per standard box or equivalent of fresh winter pears handled. The Committee unanimously recommended 2011-2012 expenditures of \$8,827,860 and an assessment rate of \$0.471 per standard box or equivalent of fresh winter pears. The assessment rate of \$0.471 is \$0.03 lower than the previous rate. The assessment rates for summer/fall and "other"

fresh pears remain unchanged at \$0.366 and \$0.00, respectively. The Committee recommended the assessment rate decrease because the fresh winter pear promotion budget for the 2011-2012 fiscal period was reduced.

The quantity of assessable fresh winter pears for the 2011-2012 fiscal period is estimated at 15,500,000 standard boxes or equivalent. Thus, the \$0.471 rate should provide \$7,300,500 in assessment income. In addition, income derived from summer/fall fresh pear handler assessments, interest, and miscellaneous income will be adequate to cover the budgeted expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes

become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Oregon-Washington fresh pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the Oregon-Washington pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 3, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Comments on the interim rule were required to be received on or before October 31, 2011. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:
<http://www.regulations.gov/#!documentDetail;D=AMS-FV-11-0060-0001>

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 54075, August 31, 2011) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

PART 927 - PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim rule amending 7 CFR part 927, which was published at 76 FR 54075 on August 31, 2011, is adopted as a final rule, without change.

Dated: April 5, 2012

David R. Shipman
Acting Administrator
Agricultural Marketing Service

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